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EXAMINER

MORGAN, ROBERT W

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3626

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/409,242
Filing Date: September 30, 1999
Appellant(s): VAID, RAHUL R.

Joshua A. Griswold
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/5/07 appealing from the Office action mailed 7/10/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,897,620	WALKER et al.	4-1999
5,593,705	ONEDA	9-1999

Wall Street Journal, "Hawaiian Air to Offer Tickets Through ATMs", Wall Street Journal, New York, Jan 6, 1998, ISSN. 00999660 pg. B6

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-11, 14-16 and 76-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,897,620 to Walker et al. in view of "Hawaiian Air to Offer Tickets Through ATMs" by Wall Street Journal.

As per claim 1, Walker et al. teaches a pre-paid airline ticket comprising a record of an advance-purchase of an airline ticket for a fixed price to be utilized by a customer to book a flight, the pre-paid airline ticket including an identifier, the identifier uniquely identifying the pre-paid airline ticket and operable to be utilized by the customer to book a flight, and, associated with identifier, a plurality of geographic flight parameters and a plurality of non-geographic flight parameters, at least one of the plurality of geographic flight parameter being unspecified. These limitations are met by the unspecified-time ticket that includes receiving identification of flight information such as destination location and departure times, special fares and also receiving information regarding booking a ticket at the special fares (see: column 3, lines 1-11). In addition, Walker et al. teach a CPU (305, Fig. 3) that is coupled to an electronic mail processor (322, Fig. 3) for processing and storing e-mail message transmitted between the CPU (305, Fig. 3) and the various travel agents, airlines and the like (see: column 7, lines 61-65).

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Furthermore, Walker et al. teach that the processor communication with a memory device, and the processor is configured to: create a list for air travel, make special fare list available, determine which flight satisfy the user request, select a particular flight and provide notification of flight information (see: column 22, lines 32-47). In an alternative embodiment, Walker et al. also teaches traveler could receive a verification code and use it to pick up a ticket at the airline's desk prior to departure (see: column 15, lines 46-49). Moreover, Walker et al. teaches that if instructed by the traveler (105, Fig. 1) and if there is available inventory for a special fare listing, the travel agent (110, Fig. 1) will book the unspecified-time ticket and create a passenger name record (PNR) number (see: column 5, lines 64 to column 6, lines 5). This suggests that actual flight information is presented and selected by the customer or agent via a network. For example, if only one flight from the participating airlines meets the passengers travel criteria and then is presented and selected by the passenger, it would meet Applicant claimed invention.

Walker et al. fails to teach an identifier associated with the uniquely identifying the record for the customer to user to exercise the pre-paid, fixed price option.

Wall Street Journal teaches that Hawaiian Air plans to allow customer and non-customer of Bank of Hawaii to buy flight coupons through the bank's ATMs 24 hours a day using a card issued by the bank or a major credit card (see: paragraph 4). Furthermore, the coupon or "open ticket" will be valid for a year and will cost the same as those purchase from the airline or travel agency. The customer will need to contact Hawaiian Air to reserve space on their desired flight (see: paragraph 4). Since Hawaiian Air is issuing "open tickets" which are valid for year the skilled artisan expects an "open ticket" to include an identifier identifying the pre-paid airline ticket and operable to be utilized by the customer to book a flight.

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Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include Hawaiian Air's "open tickets" as taught by the Wall Street Journal within the unspecified-time airline ticket as taught by Walker et al. with the motivation of providing the customer with a method to purchasing advanced open tickets to allow utmost flexibility thereby better accommodating the traveler.

As per claim 2, Walker et al. teaches the claimed wherein the identifier comprises an alpha-numeric sequence. This feature is met by the seat allocation database (245, Fig. 2) that includes each flight identified by a flight number with a departure date (see: column 10, lines 7-15).

As per claim 3, Walker et al. teaches the claimed plurality of non-geographic flight parameters include at least two of the following: a date, a time, a flight number, and a seat number. This limitation is met by the flight schedule database (240, Fig. 2) that contains flight information including departure date, flight number and flight times and the seat allocation database (245, Fig. 2) that contains seat information (see: column 7, lines 35-41 and column 10, lines 13-15).

As per claim 4, Walker et al. teaches the claimed plurality of non-geographic flight parameters further comprise one or more unspecified non-geographic flight parameters. The unspecified-time tickets meet this feature, by incorporating flexibility regarding the origin (if there are one or more airport in the area local to the traveler) and the destination (is there more than one airport accessible for the traveler's ultimate destination) to select the best flight at a certain price. The origin and destination of the unspecified-time tickets are all examples of the geographic flight parameter (see: column 12, lines 28-44).

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As per claim 5, Walker et al. teaches the claimed one or more unspecified non-geographic flight parameters comprise a range of possible values from which the one or more unspecified non-geographic flight parameters may be selected. This feature is met by the forecasted demand analysis database (230, Fig. 2) that contains information on each selling price for each fare for a given flight (see: column 7, lines 45-49).

As per claim 6, Walker et al. teaches the claimed plurality of geographic flight parameters comprise a departure location and a destination location. This limitation is met by the viewing of special fare listing information including specified destination location from a specified departure location (see: column 2, lines 30-35).

As per claim 7, Walker et al. teaches the claimed dependence between two or more of the plurality of geographic flight parameters. The unspecified-time tickets meet this feature, by incorporating flexibility regarding the origin (if there are one or more airport in the area local to the traveler) and the destination (is there more than one airport accessible for the traveler's ultimate destination) to select the best flight at a certain price (see: column 12, lines 28-44).

As per claim 8, Walker et al. teaches the claimed dependence comprises a maximum distance between the destination location and the departure location. The unspecified-time tickets meet this feature, by incorporating flexibility regarding the origin (if there are one or more airport in the area local to the traveler) and the destination (is there more than one airport accessible for the traveler's ultimate destination) to select the best flight at a certain price. The origin and the destination (distance) of the airports are all taken into consideration when placing a traveler aboard a flight (see: column 12, lines 28-44).

As per claims 9-11, Walker et al. teaches the claimed dependence comprises a geographical region from which the departure location must be selected for a specified destination and the destination must be selected for a specified departure location. These features are met by viewing a list of special fares to a specific destination location and a specific departure location regarding a specific route (see: column 3, lines 12-23 and column 4, lines 38 42).

As per claim 14, Walker teaches the claimed printed receipt, the printed receipt including a first part for presentation to an airline and a second part for a customer's records, the printed receipt including, in printed form, the unique identifier, the plurality of non-geographic flight parameters, and the plurality of geographic flight parameters (see: column 6, lines 27-32).

As per claim 15, Walker teaches the claimed wherein said processor is further configured to issue an electronic receipt including, the identifier (see: column 15, lines 34-52).

As per claim 16, Walker teaches the claimed wherein the electronic receipt is an email receipt (column 5, lines 49-54).

As per claim 76, Walker teaches the claimed said storage device further stores a database in which the record is stored. This limitation is met by the reservation database (255, Fig. 3) that contains each booking of a ticket for a given fare class on a given flight. The suggests that a record of the pre-paid, fixed-price option (ticket) purchased by the customer is stored in the database.

As per claim 77, wherein the processor retrieves the record by accessing the database. This feature is met the processor in communication with a memory device, and the processor is configured to: create a list for air travel, make special fare list available, determine which flight

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satisfy the user request, select a particular flight and provide notification of flight information (see: column 22, lines 32-47)

As per claim 78, Walker teaches the claimed actual flights presented to the customer are presented with scheduled flight times. This limitation is met when if instructed by the traveler (105, Fig. 1) and if there is available inventory for a special fare listing, the travel agent (110, Fig. 1) will book the unspecified-time ticket and create a passenger name record (PNR) number (see: column 5, lines 64 to column 6, lines 5). This suggests that actual flight information is presented and selected by the customer or agent via a network. For example, if only one flight from the participating airlines meets the passengers travel criteria and then is presented and selected by the passenger, it would meet Applicant claimed invention.

11. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,897,620 to Walker et al. in view of U.S. Patent No 5,953,705 to Oneda.

As per claim 12, Walker et al. teaches a system and method to create and sell unspecified-time airline tickets corresponding to a special fare (see: column 2, lines 25-29).

Walker et al. fails to teach the claimed configured to store data on a machine-readable, tangible medium.

Oneda teaches an airplane ticket system using IC cards (38, Fig. 2C) that are wallet-sized with a magnetic stripe (300, Fig. 2B) and a ten-key portion (308, Fig. 2B) for inputting a personal identification code (see: column 7, lines 66 to column 19).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to include the airplane ticket IC cards with a magnetic stripe as taught by Oneda within the unspecified-time airline tickets as taught by Walker et al. with the

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motivation of securing the identification of a traveler, thereby providing a fast and efficient way of for a traveler to board their flight.

As per claim 13, Walker et al. teaches a system and method to create and sell unspecified-time airline tickets corresponding to a special fare (see: column 2, lines 25-29).

Walker et al. fails to teach the claimed machine-readable, tangible medium stores an encoded representation of the identifier.

Oneda teaches an airplane ticket system using IC cards (38, Fig. 2C) that are wallet-sized with a magnetic stripe (300, Fig. 2B) and a ten-key portion (308, Fig. 2B) for inputting a personal identification code (see: column 7, lines 66 to column 19). Oneda also teach an IC card portion (312, Fig. 2C) on the IC card (38, Fig. 2C), which the Examiner considers to be similar to a bar code.

The motivation for combining the respective teachings of Walker et al. and Oneda are discussed above in the rejection of claim 12, and incorporated here.

(10) Response to Argument

In the Appeal Brief filed 5 February 2007, Appellant makes the following arguments:

- (A) The Examiner fails to establish a *prima facie* case of obviousness.
- (B) Walker requires airlines to book flights for customer.
- (C) Hawaiian Air does not disclose a record stored in a storage device or a system that presents flight available to a customer.
- (D) The proposed modification of Hawaiian Air's 'open ticket' cannot be combined with Walker's system and would render unsatisfactory for its intended purpose.

Examiner will address Appellant's arguments in sequence as they appear in the brief.

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Response to Argument (A):

In response to the first argument, the Examiner respectfully submits that establishing a *prima facie* case of obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a *prima facie* case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention (see: paper dated 7/10/06).

In addition, the Examiner recognizes obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

Additionally, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is

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no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

As such, it is respectfully submitted that an explanation based on logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner in the prior Office Action (see: paper dated 7/10/06), *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

Response to Argument (B):

In response to the second argument, the Examiner respectfully submits that claim language recites "...book the flight selected by the customer from among the presented flights by exercising the pre-paid, fixed-price option". Therefore, the prior art need only show that one flight representative of geographic and non-geographic flight parameters be presented to customer in order to be booked. The Walker et al. reference teaches that if instructed by the traveler (105, Fig. 1) and if there is available inventory for a special fare listing, the travel agent (110, Fig. 1) can book an unspecified-time ticket and create a passenger name record (PNR) number (see: column 5, lines 64 to column 6, lines 5). This suggests that actual flight information is presented and selected by the customer or agent via a network. For example, if only one flight from the participating airlines meets the passengers travel criteria and then is presented and selected by the passenger would meet the claimed invention.

Response to Argument (C):

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In response to the second argument, the Examiner respectfully submits that the Walker et al. reference teaches a CPU (305, Fig. 3) that is coupled to an electronic mail processor (322, Fig. 3) for processing and storing e-mail message transmitted between the CPU (305, Fig. 3) and the various travel agents, airlines and the like (see: column 7, lines 61-65). Walker et al. also teaches that the processor communication with a memory device, and the processor is configured to: create a list for air travel, make special fare list available, determine which flight satisfy the user request, select a particular flight and provide notification of flight information (see: column 22, lines 32-47). In addition, Walker et al. teaches a reservation database (255, Fig. 3) that contains each booking of a ticket for a given fare class on a given flight. This suggests that a record of each pre-paid, fixed-price option (ticket) purchased by the customer is stored in the database.

Response to Argument (D):

In response to the second argument, the Examiner respectfully submits Walker et al. teaches a unspecified-time ticket that includes receiving identification of flight information such as destination location and departure location, special fares and also receiving information regarding booking a ticket at the special fares (see: column 3, lines 1-11). Hawaiian Air teaches a plan to allow customer and non-customer of Bank of Hawaii to buy flight coupons through the bank's ATMs 24 hours a day using a card issued by the bank or a major credit card (see: paragraph 4). In addition, the coupon or "open ticket" will be valid for a year and will cost the same as those purchase from the airline or travel agency. The customer will need to contact Hawaiian Air to reserve space on their desired flight (see: paragraph 4). It is respectfully submitted that a passenger's "desired flight" would include a passenger's intended destinations

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or destination range. Therefore, the proper combination of Walker and Hawaiian Air is to extend Walker's unspecified-time ticket for a time range to unspecified destination and time ticket for a time range and a range of possible destination, as taught by Hawaiian Air. As such, the Examiner disputes that incorporating the Hawaiian Air open ticket into the system of Walker renders the system of Walker unsatisfactory for its intended purpose.

In addition, the Examiner recognizes obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

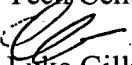
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